IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Patent Application of:
Hani El-Gebaly

Docket No.: P11785

Serial No.: 09/896,521

Group Art Unit: 2143

Filed: June 28, 2001

Examiner: Jean Gilles, Jude

For: **DISTRIBUTED MULTIPOINT CONFERENCING**

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF UNDER 37 C.F.R. §41.37 (a)

Sir:

Appellants have filed a timely Notice of Appeal from the Final Office Action, on December 19, 2005. A single copy of this brief is provided pursuant to 35 U.S.C. § 41.37(a).

A check for $500.00 to cover the fee for filing this appeal brief is attached hereto. If additional extensions of time are necessary, then such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required therefore (including any additional fees for filing of the Appeal Brief) are hereby authorized to be charged, or overpayment credited, to Intel Deposit Account 50-0221.

REAL PARTY IN INTEREST

The real party in interest in this appeal is Intel Corporation, assignee of the entire interest in the above-identified application.

RELATED APPEALS AND INTERFERENCES

The Appellants, their legal representatives and the Assignee are not currently aware of any appeal that may directly affect or be indirectly affected by or have some bearing on the Board's decision in this appeal. Attached hereto is a Related Proceedings Appendix showing no related appeals or interferences.

STATUS OF THE CLAIMS

Claims 1 - 30 are currently pending.

Claims 1 - 30 are currently rejected.

Claims 1 - 30 are the subject of this appeal.

No claims have been withdrawn, cancelled, or allowed. The claims in issue are attached in the "Claims Appendix" attached herewith.

STATUS OF AMENDMENTS

The Advisory Action of February 13, 2006 indicates that the Amendment filed on December 21, 2005 was not entered. All amendments prior to that date have been entered.

SUMMARY OF CLAIMED SUBJECT MATTER

Briefly, embodiments of the present invention are directed to multipoint conferencing. As explained for example with reference to Figure 1A, prior art systems typically use a Multipoint Control Unit (MCU) 104 to coordinate between the various participants in the conference. As shown in Figure 1A, all signaling and connections may be routed through the MCU in a centralized system or, as shown in Figure 1B, in a decentralized system, a Multipoint Controller (MC) 108 is still used to serve a centralized signaling controller.

Embodiments of the present invention seek to eliminate the use of the MCU 104 and the MC 108. As stated in paragraph [0011] of the disclosure, embodiments of the invention involve a signaling process for setting up a distributed multipoint conference among three or more endpoints without requiring centralized control either for signaling or for mixing media streams.

As stated in paragraph [0018], the absence of the MCU or MC further may tend to reduce communication latency because communicating directly among the conference participants, rather than through a central entity, may minimize the number of network "hops" required to collect, mix and redistribute the media streams.

The independent claims were previously amended to recite that the participants communication "directly" with one another. That is, without the use of a centralized control such as a MCU or MC.

Independent Claim 1

The invention recited by claim 1 is directed to a method for setting up a distributed multipoint conference among three or more endpoints without requiring centralized control either for signaling or for mixing media streams comprising **(Fig. 2, 202; Paragraph [0011]**:

establishing a connection between a plurality of endpoints, including at least a requesting endpoint and one or more other participating endpoints **(Figure 2, 204)**;

initiating a connection from the requesting endpoint to at least a third endpoint, the requesting endpoint identifying to the third endpoint the one or more other participating endpoints **(Fig. 2, 206-208)**; and

the third endpoint directly establishing a connection between itself the one or more other participating endpoints identified by the requesting endpoint, the third endpoint identifying the requesting endpoint to the one or more other participating endpoints **(Figure 2, 210)**.

Independent Claim 12

Claim 12 is directed to a method of facilitating a multipoint conference among three or more endpoints, the method comprising:

receiving from a requesting endpoint information comprising an invitation to establish a connection with the requesting endpoint, the invitation identifying one or more other participating endpoints participating in a conference with the requesting endpoint **(Fig. 2. 202-204; Paragraph [0011])**; and

directly sending to each of the other participating endpoints identified by the requesting endpoint an invitation to establish a connection and information identifying the requesting endpoint **(Figure 2, 210-212; Paragraph [0018])**.

Independent Claim 21

Claim 21 is directed to a machine-accessible medium including instructions that, when executed, cause a machine to:

directly receive from an requesting endpoint information comprising an invitation to establish a connection with the requesting endpoint and identifying one or more other endpoints participating in a conference with the requesting endpoint **(Figure 2, 202; Paragraphs [0011] and [0019])**;

directly establish a connection with the requesting endpoint **(Fig. 2, 204)**;

directly send to each of the other endpoints identified by the requesting endpoint an invitation to establish a connection and information identifying the requesting endpoint **(Fig. 2 , 206; Paragraph [0012])**;

directly receive from each of the other endpoints information establishing a connection **(Figure 2, 210-212)**; and

mix a plurality of unicast streams received from the inviting and other endpoints to form a logical conference **(Paragraph [0019])**.

Independent Claim 25

Independent claim 25 is directed to a system comprising:

a user interface configured to receive from a user of the application input identifying one or more endpoints to be called to form a conference and to present a plurality of media streams to the user in a format that suggests inter-relatedness of the streams **(paragraph [001])**; and

H.323 protocol support for performing the following Internet Protocol (IP) telephony operations **(paragraph [0011])**:

(i) directly receive from an requesting endpoint information comprising an invitation to establish a connection with the requesting endpoint and identifying one or more other endpoints participating in a conference with the requesting endpoint **(Fig. 2, 202); Paragraph [0011])**;

(ii) directly establish a connection with the requesting endpoint **(Fig. 2, 204)**;

(iii) directly send to each of the other endpoints identified by the requesting endpoint an invitation to establish a connection and information identifying the requesting endpoint **(Fig. 2, 206)**;

(iv) directly receive from each of the other endpoints information establishing a connection **(Fig. 2, 212)**; and

(v) mix a plurality of unicast streams received from the inviting and other endpoints to form a logical conference **(paragraph [0019])**.

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1. Claims 1-4, 10, 12-14, 17-19, and 21 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,625,407 to Biggs in view of U.S. Patent 6,783,343 to Shaffer;

2. Claims 25-27 and 29-30 have been rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,731,609 to Hirni in view if Shaffer;

3. Claims 5-8, 11, 15-16, 20, and 22-24 have been rejected under 35 U.S.C. 103(a) in view of Biggs and Hirni and Shaffer;

4. Claim 9 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Biggs and Shaffer and U.S. Patent 5,566,171 to Levinson;

5. Claim 28 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Hirni and Shaffer and U.S. Patent 5,859,979 to Tung.

ARGUMENT

REJECTION UNDER 35 U.S.C. 103(a)
Claims 1-30

Appellants appeal the rejection of all pending claims, which is based, in short, on the Examiner's position that Shaffer's "direct signaling" is analogous to applicant's direct communication between endpoints, as this feature does not seem to appear in the other references of record.

As a matter of law, the prior art rejections are in error and are made through the Examiner's impermissible use of hindsight gained by knowledge of Appellant's invention. Indeed, as discussed below, the rejections are made through a misapplication of the law. Further, as a matter of fact, the Examiner's analysis of the references with regard to the claimed invention is fatally flawed and erroneous for the reasons given below.

Claims 1-4, 10, 12-14, 17-19, and 21

These claims stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,625,407 to Biggs in view of U.S. Patent 6,783,343 to Shaffer.

Biggs:

Biggs appears to be directed to the type of system described in Applicant's Figure 1B as it requires a centralized device dubbed the "MultiMedia Serve" (MMS) 102 to coordinate exchanges between the various endpoints or participants in the conference. As recited in the abstract of Biggs "The MMS is equipped to control the network such that multimedia signals may be exchanged among a plurality of endpoint devices, thereby providing a multimedia conference".

Embodiments of the present invention require no such MMS or other centralized device as taught by Briggs. In fact, embodiments of the claimed invention are directed to eliminating such a device.

Recognizing this deficiency, in the final Office Action, the Examiner has additionally relied on Shaffer which teaches "direct signaling" and the Examiner argues also eliminates the need for a centralized device such as an MMS.

Shaffer:

The Examiner relies on Shaffer to allegedly teach "direct signaling" between the clients, as this is not taught in Biggs. In particular, the examiner points to, among other

places, column 2, lines 14-20 as teaching *"...providing the network with the ability to sustain is a gatekeeper fails and in that the signaling is to be handled through the direct signaling"*.

However, this is not the same as the present invention. Shaffer, like the rest, relies on a centralized device to control communications between the clients. As shown in Figure 1 of Shaffer, there is a MCU 104 in addition to two "gatekeepers" 108a and 108b. As shown in Figure 5 (also on face of patent), two centralized redundant "gatekeepers" are used. As indicated by the Xed out lines, if gate keeper 108a fails, control is switched to gatekeeper 108b. The "direct signaling" to which the Examiner refers is only used temporarily to keep from loosing the connection during a primary gatekeeper failure before switching control to the redundant gatekeeper. The Examiner took his above quote out of context. As taught on column 2, lines 14-20:

"If the gatekeeper fails, the media channel(s) is maintained, and the redundancy supervisory layers know that signaling is to be handled through the direct signaling and call control channels. The client terminal's user interface may "black out" (prohibit the invocation of) features which are not available when in direct signaling mode" (emphasis added).

Thus, during "direct signaling" there is a blackout period and conferencing would be stymied until another **centralized controller** (i.e. redundant gatekeeper) took control. This is unrelated to the present invention which avoids the use of a centralized controller.

Combination of Biggs and Shaffer:

As previously amended, claim 1 recites "A method for setting up a distributed multipoint conference among three or more endpoints without requiring centralized control either for signaling or for mixing media streams comprising: ...the third endpoint directly establishing a connection between itself the one or more other participating

endpoints identified by the requesting endpoint, the third endpoint identifying the requesting endpoint to the one or more other participating endpoints" (emphasis added).

Independent claim 12 recites "A method of facilitating a multipoint conference among three or more endpoints, the method comprising: directly sending to each of the other participating endpoints identified by the requesting endpoint an invitation to establish a connection and information identifying the requesting endpoint" (emphasis added).

Independent claim 21 (and similarly claim 25) recites "directly receive from an requesting endpoint information comprising an invitation to establish a connection with the requesting endpoint and identifying one or more other endpoints participating in a conference with the requesting endpoint; directly establish a connection with the requesting endpoint; directly send to each of the other endpoints identified by the requesting endpoint an invitation to establish a connection and information identifying the requesting endpoint; directly receive from each of the other endpoints information establishing a connection; and mix a plurality of unicast streams received from the inviting and other endpoints to form a logical conference" (emphasis added).

The above features recited in the claims are simply not taught or suggested by the combination of Biggs and Shaffer. As such, it is respectfully requested that the Board reverse the Examiner with regard to this rejection.

Claims 25-27 and 29-30

These claims have rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,731,609 to Hirni in view if Shaffer (discussed above).

Hirni:

Hirni appears to be directed to a telephony system for conducting multimedia telephonic conferences over a packet based network. The Examiner appears to rely on Hirni because this reference discusses the "H.232 protocol", which in addition to many other recitations, is included in the set of rejected claims.

However, Similar to Biggs and Shaffer discussed above, Hirni requires a centralized switch dubbed an "Automatic Call Distributor" (ACD) in order to setup and route calls in a teleconferencing environment.

As shown for example in Hirni's Figure 3, all the endpoints in a teleconference must be routed through a centralized server 36. Again, Applicant's claims as presented eliminate the use of such a centralized server or other such device.

Again, Applicant's claims as presented eliminate the use of such a centralized server or other such device as evidenced in the novel features of the claims quoted above. Thus, the Board is respectfully requested to reverse the Examiner with regard to this ground of rejection.

Claims 5-8, 11, 15-16, 20, and 22-24

These claims have been rejected under 35 U.S.C. 103(a) in view of Biggs and Hirni and Shaffer, all discussed above.

These claims are all dependent claims which include all of the features of their parents, previously rejected over these same three references and it is unclear as to why these claims weren't included in previous ground of rejection. However, again, Applicant's claims as presented eliminate the use of such a centralized server or other such device as evidenced in the novel features of the claims quoted above. Thus, the Board is respectfully requested to reverse the Examiner with regard to this ground of

rejection.

Claim 9

This claim stands rejected under 35 U.S.C. 103(a) as being unpatentable over Biggs and Shaffer and U.S. Patent 5,566,171 to Levinson. The combination and deficiencies of Biggs and Shaffer are discussed above.

Levinson:

The Examiner relies on Levinson for teaching a "fast connection procedure". Levinson appears to be directed to a multi-mode high speed network switch. While Levinson does appear to use the phrase "fast connection sequence", it does not teach or suggest a teleconferencing system where the endpoints communicate directly thus eliminating the need for a centralized server or processing unit as claimed. Thus, since his feature is also lacking in Biggs and Schaffer as argued above, *prima facie* obviousness has not been shown.

Thus, the Board is respectfully requested to reverse the Examiner with regard to this ground of rejection.

Claim 28

This dependent claim stands rejected under 35 U.S.C. 103(a) as being unpatentable over Hirni and Shaffer, discussed above, and U.S. Patent 5,859,979 to Tung.

Tung:

Tung appears to be directed to a system for negotiating conferencing capabilities by selecting a subset of a non-unique set of conferencing

capabilities to specify a unique set of conferencing capabilities.

The examiner has relied on Tung for teaching "the reception and display of remote video signals in the remote video window". However, even assuming arguendo that this dependent claim feature is taught by Tung, it does not cure the primary deficiencies as previously pointed out in Hirni and Shaffer to warrant a case of *prima facie* obviousness.

Thus, the Board is respectfully requested to reverse the Examiner with regard to this ground of rejection.

The Examiner's Rejections are in Error

Referring to MPEP § 2143, titled "Basic Requirements for a *Prima Facie* case of Obviousness", the MPEP mandates that:

"To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all of the claimed limitations.

The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not applicant's disclosure." (emphasis added).

It is again respectfully submitted that all of the features, recited in the claims, are not present even if Biggs, Shaffer, Hirni, Levenson, and Tung are combined, in any combination. Thus, the combination does not show *prima facie* obviousness under § 103. Specifically, all references in the rejections above require some type of centralized controller to administer communication between endpoints participating in a conference. The claimed invention eliminates this centralized controller by direct communications between the endpoints.

It is incumbent upon the Examiner to establish a factual basis to support the legal conclusion

of obviousness. In re Fine, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596 (Fed. Cir. 1988). This objective can only be established by an objective teaching in the prior art or by cogent reasoning that the knowledge is available to one of ordinary skill in the art. In re Lalu, 747 F.2d 703, 223 U.S.P.Q. 1257 (Fed. Cir. 1988). Here there is none.

Indeed, in the case at hand, the Examiner has failed to disregard what he has been taught by the present invention and has failed to cast his mind back to the time that the invention was made to determine what would have been obvious to one ordinarily skilled in the art who had available only the references and the then-accepted wisdom in the art.

The PTO has the initial burden under section 103 to establish a *prima facie* case of obviousness. See, In re Piasecki, 223 USPQ 785, 788. The PTO can satisfy this burden *only* by showing some *objective* teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references. In re Lalu, *supra*; see also, Ashland Oil, Inc. V. Delta Resins & Refractories, Inc., 776 F.2d 281, 297 n.24, 227 USPQ 657, 667 n.24 (Fed. Cir. 1985); ACS Hosp. Sys., Inc. v. Monteviore Hosp., 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). Here, it is respectfully submitted that the Examiner has failed to show *prima facie* obviousness.

As such, it is respectfully requested that the Board reverse the Examiner on all grounds of rejection.

CONCLUSION

In summary, Biggs, Shaffer, Hirni, Levenson, and Tung do not teach or suggest the features of the claimed invention. Therefore, the references do not provide evidence that would support a conclusion of obviousness under 35 U.S.C. §103(a). Appellants thus respectfully submit that the rejections of claims 1-30 are in error and that reversal is warranted in this case.

Respectfully submitted,

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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to:
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On: February 22, 2006

Signature: Katherine Jennings

CLAIMS APPENDIX

A copy of the claims involved in the appeal is provided below.

1 (previously presented). A method for setting up a distributed multipoint conference among three or more endpoints without requiring centralized control either for signaling or for mixing media streams comprising:

establishing a connection between a plurality of endpoints, including at least a requesting endpoint and one or more other participating endpoints;

initiating a connection from the requesting endpoint to at least a third endpoint, the requesting endpoint identifying to the third endpoint the one or more other participating endpoints; and

the third endpoint directly establishing a connection between itself the one or more other participating endpoints identified by the requesting endpoint, the third endpoint identifying the requesting endpoint to the one or more other participating endpoints.

2 (original). The method of claim 1 in which the connections between endpoints comprise connections that support unicast streams.

3 (original). The method of claim 1 further comprising at each of the endpoints, mixing streams received from each of the other endpoints to form a logical conference.

4 (original). The method of claim 1 further comprising, in response to the initiation of the connection from the requesting endpoint, establishing a connection from the third endpoint to the requesting endpoint.

5 (original). The method of claim 1 in which initiating a connection comprises sending an H.323 setup request message that includes an identity of the one or more other participating endpoints.

6 (original). The method of claim 5 in which sending the H.323 setup request message comprises formatting the H.323 setup request message to include the identity of the one or more other participating endpoints in a non-standard parameter field of the H.323 message.

7 (original). The method of claim 1 in which establishing the connection between the third endpoint and the one or more other participating endpoints comprises sending an H.323 setup request message that includes an identity of the requesting endpoint.

8 (original). The method of claim 7 in which sending the H.323 setup request message comprises formatting the H.323 setup request message to include the identity of the requesting endpoint in a non-standard parameter field of the H.323 message.

9 (original). The method of claim 1 in which initiating a connection comprises using a Fast Connect procedure.

10 (original). The method of claim 1 in which the initiating and establishing are repeated to form an N-way conference, where N is an integer greater than three.

11 (original). The method of claim 1 in which initiating a connection to a third endpoint is performed in response to input received from a user of an Internet Protocol telephony application.

12 (previously presented). A method of facilitating a multipoint conference among three or more endpoints, the method comprising:

receiving from a requesting endpoint information comprising an invitation to establish a connection with the requesting endpoint, the invitation identifying one or more other participating endpoints participating in a conference with the requesting endpoint; and

directly sending to each of the other participating endpoints identified by the requesting endpoint an invitation to establish a connection and information identifying the requesting endpoint.

13 (original). The method of claim 12 further comprising, in response to receiving an invitation from the requesting endpoint, establishing a connection with the requesting endpoint.

14 (original). The method of claim 13 in which establishing the connection with the requesting endpoint is order independent from sending invitations to each of the other participating endpoints identified by the requesting endpoint.

15 (original). The method of claim 12 in which receiving an invitation from the requesting endpoint comprises receiving an H.323 setup request message that identifies the one or more other participating endpoints in a non-standard parameter field.

16 (original). The method of claim 12 in which sending an invitation to each of the other participating endpoints identified by the requesting endpoint comprises sending an H.323 setup request message that identifies the requesting endpoint in a non-standard parameter field.

17 (original). The method of claim 12 further comprising, in response to sending invitations to the other participating endpoints, receiving from each of the other participating endpoints information establishing a connection.

18 (original). The method of claim 12 further comprising mixing a plurality of unicast streams received from the inviting and other participating endpoints to form a logical conference.

19 (original). The method of claim 18 in which the plurality of unicast streams include voice data or video data or both.

20 (original). The method of claim 12 in which the receiving and sending are performed by an Internet Protocol telephony application.

21 (previously presented). A machine-accessible medium including instructions that, when executed, cause a machine to:

directly receive from an requesting endpoint information comprising an invitation to establish a connection with the requesting endpoint and identifying one or more other endpoints participating in a conference with the requesting endpoint;

directly establish a connection with the requesting endpoint;

directly send to each of the other endpoints identified by the requesting endpoint an invitation to establish a connection and information identifying the requesting endpoint;

directly receive from each of the other endpoints information establishing a connection; and

mix a plurality of unicast streams received from the inviting and other endpoints to form a logical conference.

22 (previously presented). The machine accessible medium of claim 21 in which the instructions to cause the computer system to receive an invitation from the requesting endpoint comprise instructions to receive an H.323 setup request message that identifies the one or more other endpoints in a non-standard parameter field.

23 (previously presented). The machine accessible medium of claim 21 in which the instructions to cause the computer system to send an invitation to each of the other endpoints identified by the requesting endpoint comprise instructions to send an H.323 setup request message that identifies the requesting endpoint in a non-standard parameter field.

24 (previously presented). The machine accessible medium of claim 21 in which the instructions are performed by an Internet Protocol telephony application.

25 (previously presented). A system comprising:

a user interface configured to receive from a user of the application input identifying one or more endpoints to be called to form a conference and to present a plurality of media streams to the user in a format that suggests inter-relatedness of the streams; and

H.323 protocol support for performing the following Internet Protocol (IP) telephony operations:

(i) directly receive from an requesting endpoint information comprising an invitation to establish a connection with the requesting endpoint and identifying one or more other endpoints participating in a conference with the requesting endpoint;

(ii) directly establish a connection with the requesting endpoint;

(iii) directly send to each of the other endpoints identified by the requesting endpoint an invitation to establish a connection and information identifying the requesting endpoint;

(iv) directly receive from each of the other endpoints information establishing a connection; and

(v) mix a plurality of unicast streams received from the inviting and other endpoints to form a logical conference.

26 (previously presented). The system of claim 25 wherein the application comprises a client configured to be executed on a computer system associated with the user, the client configured to communicate with a remote server to provide the user with IP telephony functionality.

27 (previously presented). The system of claim 25 wherein, if two or more of the unicast streams comprise audio information, the user interface is configured to overlay the audio streams to suggest inter-relatedness.

28 (previously presented). The system of claim 25 wherein, if two or more of the unicast streams comprise video information, the user interface is configured to display the video streams in adjacent display regions to suggest inter-relatedness.

29 (previously presented). The system of claim 25 in which the H.323 protocol support for receiving an invitation from the requesting endpoint comprises support to receive an H.323 setup request message that identifies the one or more other endpoints in a non-standard parameter field.

30 (previously presented). The system of claim 25 in which the H.323 protocol support for sending an invitation to each of the other endpoints identified by the requesting endpoint comprises support to send an H.323 setup request message that identifies the requesting endpoint in a non-standard parameter field.

EVIDENCE APPENDIX

This section lists evidence submitted pursuant to 35 U.S.C. §§1.130, 1.131, or 1.132, or any other evidence entered by the Examiner and relied upon by Appellant in this appeal, and provides for each piece of evidence a brief statement setting forth where in the record that evidence was entered by the Examiner. Copies of each piece of evidence are provided as required by 35 U.S.C. §41.37(c)(ix).

NO.	EVIDENCE	BRIEF STATEMENT SETTING FORTH WHERE IN THE RECORD THE EVIDENCE WAS ENTERED BY THE EXAMINER
1	N/A	N/A

RELATED PROCEEDINGS APPENDIX

Pursuant to 35 U.S.C. §41.37(c)(x), copies of the following decisions rendered by a court of the Board in any proceeding identified above under 35 U.S.C. §41.37(c)(1)(ii) are enclosed herewith.

NO.	TYPE OF PROCEEDING	REFERENCE NO.	DATE
1	N/A	N/A	N/A